

November 7th, 2004

Comments on the proposed Tehachapi East Bay Afterbay Addition.

We really appreciate all that has been done, though belatedly, to make it possible for people in this area to be alerted and have the opportunity to become informed about the project. Ms. Mary Miller truly went out of her way to bring the relevant materials up to the Frazier Park Library so local people had the chance to read through the document. She is a fine example of a public servant, for which we are truly grateful.

The proposal for building another reservoir for water on the "south" side of the mountains just north of 138 sounds reasonable. As I now understand the plan, it appears that the construction will be done in a safe manner.

I do, however, have strong reservations about the proposed mitigation, mainly because many details are lacking. Proposing to buy mitigation land directly in the same area would seem positive, but one needs to know what price is being paid per acre for this land, who appraised the property, and how the price was arrived at. Depending on the money available, consideration should be given to the idea that the money might be better spent in other areas that need to be purchased in terms of protecting more species and habitat than does the present proposed purchase.

6a

There is a very valuable wetland in this area that needs the protection of purchase. I refer to the wetland areas that lie between I-5 and Gorman Post Road, just south of Gorman. Another mitigation purchase that might be more valuable than that immediately below the aqueduct split are lands that adjoin the Kern County Wildlife Refuge, near Pixley. The Refuge would like to add to its area in order to expand locations for migratory birds.

The land proposed for mitigation purpose already has Williamson Act Protection and appears to have little chance for other development.

6b

It must be said that it appears unseemly that an arrangement to buy mitigation land appears already to be a done deal, with a demand made for payment for the land by a specific date. All of this is occurring BEFORE the project has been approved. Is this really legal?

Thank you for providing this public meeting and the opportunity to present comments concerning this project.

Sincerely yours,

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- 6a** Per CEQA Guidelines Section 15126.4 (a)(4)(B), “The mitigation measure must be ‘roughly proportional’ to the impacts of the project.” As such, the selected mitigation land is located in the same vicinity as the land being impacted by the proposed project, and is of similar habitat quality (in-kind) as the impacted land. This land also contains ephemeral drainages containing elements of riparian scrub that have the potential to increase overall habitat values at the proposed site through implementation of a habitat restoration plan that would be implemented at the conclusion of construction. This area would also provide similar habitat for sensitive species known to occur in the project area including coast horned lizard, burrowing owls, and the lark sparrow. Lands located far from the proposed project site were not considered as it would not be representative of local impacts and would not provide potential habitat for species known to occur in the proposed project area. Additionally, mitigation lands of higher biological quality, such as wetlands or riparian habitats, to mitigate for lands of much lower quality would not be proportional to the impacts of the proposed project.

EIRs do not consider cost issues except if excessive costs make implementation of mitigation measures or alternatives infeasible. Therefore, prices paid for acquired land are not an appropriate subject for the EIR. The purpose of mitigation is to offset significant impacts of the proposed project, not to provide unrelated environmental benefits. The EIR must maintain a nexus between the identified impacts of the project and the proposed mitigation measures.

- 6b** Upon further investigation by the CDWR, it was determined that there is no portion of the proposed mitigation land currently under a Williamson Act Contract. Therefore, the development of this land is not limited. It should also be noted that a Williamson Act contract does not preclude land from being developed for a public improvement. Section 51295 of the Government Code states in part “when that land is acquired in lieu of eminent domain for a public improvement by a public agency or person...the contract shall be deemed null and void as to the land actually being condemned, or so acquired as of the date the action is filed”.

The proposed project would set aside approximately 232 acres immediately southwest of the proposed project site, on the other side of the East Branch of the Aqueduct, to compensate for the 210 acres that would be permanently lost as a result of the proposed project. With implementation of Mitigation Measure BIO-4, the CDWR will develop and implement a Habitat Enhancement Plan for this acquired mitigation land, thereby increasing the habitat value of this land.